

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NAVELLIER & ASSOCIATES, INC. and
LOUIS NAVELLIER,
Defendants.

Case No. 17-cv-11633-DJC

COMMISSION'S MOTION TO STRIKE DOCKET NO. 348-1

Plaintiff Securities and Exchange Commission moves to strike Docket No. 348-1, Defendants' Proposed Disgorgement Findings of Fact and Conclusions of Law, as this document was due weeks ago and Defendants already submitted Findings/Conclusions.¹

In Docket No. 332, the Court set November 13, 2020, as Defendants' deadline to respond to the Commission's findings of fact and conclusions of law, and, "[i]f there are additional findings of fact/conclusions of law that Defendant proposes, they shall follow after responses to the Plaintiff's proposals." Defendants did so: Docket No. 343 is Defendants' responses to the Commission's proposed findings and includes "Defendants' Statement of Fact and Conclusions of Law" at paragraphs 75-152 (pp. 49-65). Now, after the Commission replied to the earlier Findings document, Defendants have submitted 111 paragraphs of new Findings and Conclusions. They supply no explanation or good cause for this new filing. No leave of court was requested and no attempt was made to confer with the Commission. The Commission is

¹ The Commission has not requested to strike Docket No. 348, Defendants' Proposed Amended Judgment, as the Court did not set an explicit deadline for this document. However, Defendants' Proposed Amended Judgment would reverse this Court's ruling on summary judgment, even though the remand from the First Circuit is limited to disgorgement.

prejudiced by this new filing, as the Commission timely responded to the Defendants' last Findings/Conclusions and the new ones fall outside of the briefing set by the Court for disgorgement.²

CONCLUSION

Defendants have not given good cause for the Court to accept this late filing or explanation for why they submit new Findings/Conclusions when they did so already. The Court should therefore strike Docket No. 348-1.

Dated: December 3, 2020

Respectfully submitted,

SECURITIES AND EXCHANGE COMMISSION

By its Attorneys,

/s/ Marc J. Jones

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² In the parties' correspondence pursuant to L.R. 7.1, Defendants' counsel argued that the new findings, "are the same ones we submitted on November 13...." They are not. Defendants have inserted new language and new findings, changed amounts, reorganized their arguments and findings, and edited their prior statements.

CERTIFICATE OF SERVICE

I certify that on December 3, 2020, a copy of the foregoing was electronically filed through the ECF system and will be sent electronically to all persons identified in the Notice of Electronic Filing and that paper copies will be sent to those indicated as non-registered participants.

Dated: December 3, 2020

/s/ Marc J. Jones

LOCAL RULE 7.1 CERTIFICATION

I certify that counsel for the parties have conferred in good faith and attempted to resolve or narrow the issues presented herein, but have been unable to do so.

Dated: December 3, 2020

/s/ Marc J. Jones